



Missouri Department of Natural Resources

MISSOURI CLEAN WATER COMMISSION MEETING

May 23, 2001

Capitol Plaza Hotel, Jefferson City, Missouri

MINUTES

Present

Thomas A. Herrmann, Chairman, Missouri Clean Water Commission
Davis Minton, Vice-Chair, Missouri Clean Water Commission
Janice Schnake Greene, Commissioner, Missouri Clean Water Commission
Arthur E. Hegi, Commissioner, Missouri Clean Water Commission
Cosette D. Kelly, Commissioner, Missouri Clean Water Commission
Kristin M. Perry, Commissioner, Missouri Clean Water Commission

Everett E. Affalter, Newburg, Missouri
Harry Bozoian, Assistant Attorney General, Jefferson City, Missouri
Kurt Breeze, Festus/Crystal City, Festus, Missouri
Bill Bryan, Assistant Attorney General, Jefferson City, Missouri
Randy Clarkson, Department of Natural Resources, Jefferson City, Missouri
Ann Crawford, Department of Natural Resources, Jefferson City, Missouri
Cindy DiStefano, Department of Conservation, Columbia, Missouri
Terry Eaton, Kansas City Power & Light, Kansas City, Missouri
Leo Ebel, Festus/Crystal City, St. Louis, Missouri
Shanon Hawk, Bryan Cave LLP, Jefferson City, Missouri
Bob Hentges, MPUA, Jefferson City, Missouri
Sallie Keeney, REGFORM, Jefferson City, Missouri
Richard J. Laux, Department of Natural Resources, Jefferson City, Missouri
John Madras, Department of Natural Resources, Jefferson City, Missouri
Melissa Manda, Department of Natural Resources, Jefferson City, Missouri
Kevin Mohammadi, Department of Natural Resources, Jefferson City, Missouri
Daniel Molloy, City of Williamsville, Poplar Bluff, Missouri
Deborah Neff, Assistant Attorney General, Jefferson City, Missouri
Maynard Reedy, Williamsville, Poplar Bluff, Missouri
Scott B. Totten, Department of Natural Resources, Jefferson City, Missouri
Steve Townley, Department of Natural Resources, Jefferson City, Missouri
Diane Waidelich, Secretary, Missouri Clean Water Commission
Roger Walker, Armstrong/Teasdale, St. Louis, Missouri
Bob Williamson, Kansas City Water Services, Kansas City, Missouri
John A. Young, Director, Division of Environmental Quality
Leanna Zweis, Department of Conservation, Columbia, Missouri

Chairman Herrmann called the meeting to order at approximately 9:10 a.m. and introduced Commissioners Greene; Kelly, Perry, Minton, Hegi and Engineering Section Chief, Randy Clarkson; Assistant Attorney General, Deborah Neff; and Secretary, Diane Waidelich.

ADMINISTRATIVE MATTERS

Public Hearing on Proposed Amendments

All witnesses were sworn in by the court reporter to testify at a public hearing held on proposed amendments to 10 CSR 20-4.023 State Forty Percent Construction Grant Program and 10 CSR 20-4.043 Hardship Grant Program. A transcript of this hearing will be available for review at the office of the Missouri Clean Water Commission, Jefferson State Office Building, 205 Jefferson Street, Jefferson City, Missouri.

Staff Recommendation on Williamsville Variance Request

Richard Laux, Water Pollution Control Program Permits Section, reported the department received an application and fee from the City of Williamsville on April 18, 2001. This application was determined to be essentially complete. Staff investigation found:

1. The City of Williamsville experiences high infiltration and inflow to their sewer system causing backups into basements and significant wet weather bypassing.
2. The bypassed wastewater enters tributaries of Williams Creek, which is the receiving stream for the permitted discharge.
3. The city appeared on the FY 2000 40% state construction grant fundable list for \$202,680.
4. Plans and specifications were submitted on October 30, 2000 and approved on November 20, 2000. The project began advertising on December 7, 2000, opened bids on January 10, 2001 and awarded their construction contract on February 7, 2001. During the preconstruction conference held in March, staff realized that only phase one of a three-phase project was bid and contracted within the two-year period.
5. 10 CSR 20-4.023 (7)(D) states that "if a fundable high priority project has not been submitted, approval obtained on all documents required for a state grant and obtained the primary source of funding (sixty percent (60%) local share) within two (2) years of being placed on the fundable list, it shall be removed from the fundable list on November 15 of the second year." Staff believes they correctly interpreted the regulations finding that the grant should be based upon the portion of the project, which was bid prior to the adoption of the FY 2002 Intended Use Plan.

- . There was no correspondence or phone conversations with or from the city or their consultant that indicated that the project was phased until the preconstruction conference on March 20, 2001.
- 7. The contract that was awarded provides a pump station and relief sewer to the city's wastewater treatment plant and does not address the I/I problems within the system. The remaining contracts, television inspection and rehabilitation work associated with that, are necessary to provide system integrity and reliability and eliminate or reduce the bypassing related to the infiltration/inflow. These two contracts can be awarded within 6-9 months.

Mr. Laux requested approval of the request for variance. He recommended that a firm timeline be established with all documents approved within nine months from the date of the variance approval and construction completed within one year from the date of the variance approval. Mr. Laux noted staff recognizes that if the additional phases are not completed, there will be little improvement to the infiltration and inflow. Bypassing of sewage into Williams Creek may continue and basement backups are likely to also continue. Exact dates for the timeline will be incorporated into the variance upon final approval. Mr. Laux stated staff considers this project to be in the best interest of protecting the waters of the state, and recommended that the variance be approved.

Commissioner Perry asked if a precedent will be set if this variance is granted.

Mr. Laux responded this was not a major concern of staff. This request is somewhat unusual in that it is normally understood that when a project is phased, submittals should reflect that the project is being phased and different phases might appear on different fundable lists as a result.

Commissioner Minton asked why the city failed to inform staff of the phased project.

Mr. Laux stated he believes the engineer made some references in previous documents to phasing the project but did not clearly indicate that the project would be bid in phases.

Commissioner Minton asked if staff would have still funded the project had they known it would be phased.

Mr. Laux responded this would have meant that different phases would have appeared on different fundable lists but the project would still have been funded.

Chairman Herrmann stated the original project estimate was \$517,000 and the contract awarded was \$196,853.

Mr. Laux stated the city was notified the grant amount would be dropped down to what they had bid and that is when the variance request was submitted.

Daniel Molloy, Smith and Company, stated the project was not described as being bid in phases although this approach was outlined in the facilities plan. The project was three-step with the first being to build a pump station, second to do the infiltration/inflow study, and third to make repairs according to the results of the study.

Responding to Chairman Herrmann's question, Mr. Molloy said the infiltration/inflow is immeasurable in some cases. There is water backing up into basements and manholes overflowing; they hope to reduce the infiltration and inflow by 300-400 gallons per minute. Mr. Molloy noted this is probably the last clay pipe system installed in Southeast Missouri that is approximately 25 years old. He stated they believe the system suffered damage from an earthquake that occurred about seven years after the system was constructed.

Chairman Herrmann asked what the basis is for design of the pump station.

Mr. Molloy responded they estimated what the maximum flow is based upon the amount of surcharging and sized the pump station with both pumps running at 1000 gallons per minute. He noted they believe this is sufficient to lower the water level within the sewer system to the point where they could actually study the infiltration/inflow and maintain treatment.

Chairman Herrmann asked why the project was not phased to include the sanitary sewer evaluation survey first before the design and construction of the pump station and outfall sewer.

Mr. Molloy noted they felt it would be better to build the pump station first to handle excessive infiltration/inflow thereby helping to dry up the system to the point where it could be TVd without having to do bypass pumping for that portion of the system.

Chairman Herrmann noted the criteria for evaluation of a sanitary sewer evaluation survey is normally the economic comparison of what it costs to transport and treat and what it costs to eliminate.

Mr. Molloy responded they felt the cost between providing a 1500 gallon per minute pump station versus 1000 gallon per minute pump station was very marginal because they are pumping against a very low head.

Chairman Herrmann stated this is a two cell facultative lagoon and Chapter 8 still does not permit two cell lagoons.

Randy Clarkson, Water Pollution Control Program Engineering Section Chief, responded Chapter 8 still requires three cell lagoons.

Chairman Herrmann noted there is no proposed improvement to the treatment facility.

Commissioner Hegi asked what the population of Williamsville is.

Mr. Molloy responded the population might have increased to 429. The schedule for completion of the project is June 15, 2002. The first portion of the project has been awarded and is under construction. The city will then be ready to begin the sanitary sewer evaluation survey. Mr. Molloy requested commission approval of the variance request.

Commissioner Hegi noted he presumes the city leaders are not overly compensated for their services and not too knowledgeable about these issues and had hired the engineering firm to get the project completed.

Mr. Molloy stated they receive one dollar per year for their services.

Chairman Herrmann asked if land is available to add a third cell to the lagoon.

Mr. Molloy stated he thought the land would be available but wasn't sure if a lagoon would be satisfactory due to stream limitations.

Chairman Herrmann noted Williams Creek is a Class C stream.

Commissioner Hegi asked if the city is presently having problems meeting the discharge limits.

Mr. Molloy responded this has not been a problem.

Commissioner Hegi asked if the third lagoon would be added to meet increased discharge standards.

Mr. Molloy stated if it becomes necessary to add a third lagoon to meet standards it could be done.

Commissioner Greene moved to **accept the staff recommendation regarding the Williamsville request for variance**; seconded by Commissioner Hegi and unanimously passed.

Chairman Herrmann requested staff to assess the feasibility of upgrade of old lagoons existing in Missouri to meet the current standards.

Mr. Laux stated the public notice will be done and a final recommendation brought to the July meeting.

Festus/Crystal City Variance Request

Richard Laux, Water Pollution Control Program Permits Section, reported the public notice has been completed with no adverse comments being received. Staff recommended approval of this request at the January meeting. Mr. Laux reported the Attorney General's Office recommended staff include a condition indicating that the commission is not extending or changing the federal court ordered construction schedule in the American Canoe Association

versus Festus/Crystal City case. Mr. Laux requested approval of the variance request with the addition of this condition.

Kurt Breeze, representing Festus/Crystal City and the Twin City Levee Commission, stated he has prepared a dismissal with prejudice of commission appeal 324 which is one of the conditions of the requested variance. He continued they concur with the staff recommendations and requested approval of the variance request.

Commissioner Perry moved to **approve the Festus/Crystal City variance request as recommended by staff subject to the variance complying with the court ordered schedule and this variance will in no way conflict with this court ordered schedule;** seconded by Commissioner Greene and unanimously passed.

Mr. Laux stated an order will be prepared for commission signature at the July meeting. The order will contain a requirement for the annual report to the commission.

Referrals to the Office of the Attorney General

Orchard Heights Development

Kevin Mohammadi, Enforcement Section Chief, reported Orchard Heights Development in Phelps County is a ten-lot subdivision with 5 lots undeveloped. Although wastewater treatment is provided by an unpermitted one-cell lagoon, Orchard Heights does not have legal authority for its operation. Discharge of contaminants is in a "losing stream" environment. The sewage lagoon received little, if any, attention to its operation. It is also believed the lagoon may leak because of its general state of disrepair. The department has been working with Orchard Heights since September 1995 to find a solution. Initially, progress had been encouraging but slow with Orchard Heights working with the University of Missouri, Rolla, on a proper course of action since lagoons will not meet losing stream standards. However, no action occurred in over a year. Since sufficient time has been provided to Orchard Heights to comply with the Missouri Clean Water Law and to date compliance has not been achieved, Mr. Mohammadi recommended referral to the Office of the Attorney General.

Gene Affalter, Edgar Springs, stated he owns property next to this development. He noted raw waste is running on his property. Mr. Affalter said the system does not work. The lines are broken and it surfaces in his field.

No one was present representing Orchard Heights Development.

Commissioner Kelly moved to **refer the Orchard Heights Development to the Office of the Attorney General** for appropriate legal action; seconded by Commissioner Perry and unanimously passed.

Moore's Farm Bar and Grill

Mr. Mohammadi reported Mr. Bobby G. Moore owns and operates a small unpermitted single-cell wastewater treatment lagoon in St. Francois County. The lagoon serves a bar and grill, two mobile homes, and a camping area for recreational vehicles. Tentative agreement has been reached with the owner requiring payment of civil penalty for past violations and schedule of compliance to upgrade the treatment facility. Mr. Mohammadi recommended referral of the matter contingent upon no final agreement being reached by June 30, 2001.

Commissioner Perry asked why we are waiting until the end of June for an agreement.

Mr. Mohammadi responded a settlement agreement was sent to the party. Only the signature page was returned signed. Another copy has been sent to the party for signature and return.

Deborah Neff, Assistant Attorney General, noted the agreement has been returned along with the check for the civil penalty but the check was made out to her personally. She will endorse the check over to the county.

Commissioner Hegi asked if all the letters to the parties are sent certified/return receipt requested.

Mr. Mohammadi responded most of these letters are sent certified mail.

No one was present representing Moore's Farm Bar and Grill.

Commissioner Greene moved to **refer Moore's Farm Bar and Grill to the Office of the Attorney General contingent on not receiving the final settlement agreement by June 30, 2001**; seconded by Commissioner Minton and unanimously passed.

City of Lake Ozark, Holiday Inn Marina

Mr. Mohammadi reported a manhole owned by the City of Lake Ozark serving the Holiday Inn Marina was reported by citizen complaints to be overflowing on the dates of October 12, 2000 and November 28, 2000. When regional office staff inspected the site the discharge had ceased, but on both occasions there was evidence that the manhole had overflowed and the discharge had reached the Lake of the Ozarks. According to the city, the discharges were due to an inoperable control panel that had been struck by lightning at the lift station that serves the Holiday Inn Marina. The city stated that they had a new panel ordered as soon as they discovered the problem, but were having trouble getting the new panel from the supplier. The city said it was pumping the wastewater from the lift station on a regular basis to prevent the manhole from overflowing. Currently the city says they have replaced the control panel, and are contracting with Harms Engineering to redesign and replace the lift station which was constructed improperly.

The city is agreeable to replacing the malfunctioning lift station, however, they have failed to avail themselves of the opportunity to negotiate a civil penalty for allowing an unpermitted discharge and causing pollution of the Lake of the Ozarks. Mr. Mohammadi requested referral of this matter to the Office of the Attorney General.

No one was present representing Holiday Inn Marina.

Commissioner Hegi asked what the amount of the fine was.

Ms. Neff stated this is generally confidential information and the commission can discuss in closed session or waive the confidentiality so it can be discussed in open session.

Mr. Mohammadi stated he preferred to discuss in closed session.

Commissioner Hegi asked if the amount of the fine is determined by how many gallons of sewage go into the lake.

Mr. Mohammadi responded the Clean Water Commission Chapter 3 Administrative Assessment Protocol is used as a guideline to assess civil penalties.

Commissioner Hegi noted he did not understand why they would be subject to a fine when an Act of God occurs.

Mr. Mohammadi stated in the majority of violations people claim that they had no control over the situation.

Commissioner Minton asked why the city did not try to resolve the issue and if they disagreed with the calculation for the fine.

Mr. Mohammadi stated they just refused to pay any penalty.

Commissioner Perry asked if the city has not responded at all or responded negatively to the offer to settle.

Mr. Mohammadi responded the city clearly stated they will not pay the penalty.

Commissioner Hegi asked if they are aware that they can come before the commission and discuss their case.

Mr. Mohammadi noted they are made aware of when the matter will be brought to the commission for consideration through a notification letter from the director of staff.

Commissioner Greene moved to **refer the City of Lake Ozark Holiday Inn Marina to the Office of the Attorney General** for appropriate legal action; seconded by Commissioner Minton and unanimously passed.

Johnston Sand and Gravel

Mr. Mohammadi reported this matter involves the unlawful gravel removal operation of Mr. Charles Johnston and Johnston Sand and Gravel. This operation which was started in

January 2000 impacted about 400 feet of stream channel on Sellers Creek in Camden County. The stream configuration in this stretch of stream was largely destroyed, the riparian corridor greatly altered, and the biological habitat greatly damaged if not wholly destroyed. These activities resulted in violation of Water Quality Standards and caused pollution to waters of the state.

These parties did not have a permit for removal of material from the Land Reclamation Program of the Department of Natural Resources. The Land Reclamation Program is considering enforcement action for this violation. These parties did not have a Missouri State Operating Permit for the gravel washing operation that was performed outside guidelines for such a process. As a result, siltation of the stream was greatly enhanced.

Mr. & Mrs. Morris McDaniel are the owners of record of the property involved in the impacted segment of Sellers Creek. Apparently, the owners gave Mr. Johnston permission to utilize their property to conduct his operations. It is also expected that they profited from allowing the activity.

Mr. Mohammadi requested referral of this matter to the Office of the Attorney General. He stated it is anticipated litigation will be for penalties or damages and actions to ensure a stream channel is repaired or restored to the extent possible.

No one was present representing Johnston Sand and Gravel.

Commissioner Greene moved to **refer Johnston Sand and Gravel and Mr. and Mrs. Morris McDaniel to the Office of the Attorney General** for appropriate legal action; seconded by Commissioner Perry and unanimously passed.

City of Sheldon

Mr. Mohammadi reported the City of Sheldon is a 4th class municipality located in southern Vernon County with a population believed to be less than 500 people. The city is currently served by a one-cell waste treatment lagoon that has reached and surpassed its design life. It is no longer capable of meeting limits for Suspended Solids and Biochemical Oxygen Demand. Exceedences are routine and such exceedences are violations of the Missouri Clean Water Law.

The Water Pollution Control Program prepared and issued an Abatement Order on April 13, 1998. The Order gave the city an additional opportunity to comply without financial sanctions.

The schedule in this particular Abatement Order provided that the city would complete construction in accord with the construction permit not later than October 24, 2000. While it is not at all unusual to extend such schedules for good cause, in Sheldon's case such an extension cannot be justified. In the first place a schedule is usually extended when a few items need to be "finished up". In this case, months after the facility was to be finished, construction has not even commenced. In addition, the facility was allowed ample time to

explore its financing options for the new wastewater treatment facility but those options have been ruled out as a result of the city's apparently unacceptable fiscal practices. It appears the city will have to proceed with their own funds for this project, but it is believed they will not do so without legal action.

Mr. Mohammadi requested referral of the matter to the Office of the Attorney General.

Commissioner Minton noted communities such as this probably don't have the money to upgrade a facility or hire an attorney to defend them. He stated if a referral would help them in some way to get funds for assistance he would agree. He asked what happens in these instances.

Mr. Mohammadi replied that he believes additional pressure will push them to try harder to come up with a source of funding and possibly look at alternative treatment that is more cost effective. He continued that they will not be penalized but they have to take the initiative. Mr. Mohammadi stated they have a new mayor and administration and he is somewhat optimistic.

Commissioner Perry asked if a lawsuit commencing closes the door to them finding assistance within the department.

Mr. Mohammadi responded it does not.

Commissioner Perry asked if there is someone in the department that can speak to and encourage the new administration.

Mr. Mohammadi noted the Attorney General's Office will first explain the concerns and offer an opportunity to discuss the matter.

Commissioner Hegi noted that Mr. Mohammadi had previously stated that a letter had been sent to the city attorney. He continued that just because the city's attorney gets a letter does not necessarily mean that the city administration is informed.

Commissioner Greene stated the commission cannot make assumptions on what they've done. The commission has to look at what we've done and go from there.

Commissioner Hegi noted he understands what the little towns are up against. He asked that these notices to the communities be sent not only to their attorney but also to the mayor.

Mr. Mohammadi stated the municipality can be copied on the letters even though they are represented by an attorney.

Commissioner Perry noted sometimes personal attention is required instead of a letter writing campaign for these small towns.

Chairman Herrmann stated that is why the Technical Assistance Program came about.

Mr. Mohammadi gave a summary of the contacts made with the city.

Commissioner Perry noted that all those contacts were made through letters. She stated sometimes personal contact explaining the problem and letting them know whom they can contact for assistance is needed.

Commissioner Hegi noted he would like to see the new mayor be given additional time to make some progress.

Commissioner Greene stated the commission cannot make assumptions about what the new mayor will do. She noted they need to be given a push to move forward. The situation may not be incompetence in a small town but apathy.

Commissioner Hegi said he hates to see people penalized if there is any way around it.

No one was present representing the City of Sheldon.

Commissioner Greene moved to **refer the City of Sheldon to the Office of the Attorney General** for appropriate legal action; seconded by Commissioner Kelly and passed with the following vote: Commissioner Hegi: no; Commissioner Kelly: yes; Commissioner Minton: yes; Commissioner Perry: yes; Commissioner Greene: yes; Chairman Herrmann: yes.

Valley View Mobile Home Park

Mr. Mohammadi reported the commission is being asked to refer this matter because the department does not have the authority to waive the permit fee.

Commissioner Perry asked if this regards a fee from eight years ago.

Mr. Mohammadi reported staff spent lots of time working on this matter but it was not pursued actively because there was no danger to the environment.

Commissioner Hegi asked what is involved in closing the lagoon.

Mr. Clarkson stated closing of small lagoons is rather simple. If the sludge depth is less than one foot, they simply close it out without a lot of expense.

Commissioner Perry asked if there are very many outstanding fees.

Mr. Mohammadi responded in comparison to the number of permittees, the number is relatively small.

No one was present representing Valley View Mobile Home Park.

Commissioner Perry moved **to refer Valley View Mobile Home Park to the Office of the Attorney General** for appropriate legal action; seconded by Commissioner Greene and unanimously passed.

March 21, 2001 Meeting

Commissioner Greene moved to **adopt the March 21, 2001 meeting minutes** as submitted by staff; seconded by Commissioner Kelly and unanimously passed.

Closed Session

Commissioner Perry moved to **go into closed session** at approximately 10:35 a.m. to discuss legal, confidential, or privileged matters under section 610.021(1), RSMo; personnel actions under Section 610.021(3), RSMo; personnel records or applications under Section 610.021(13), RSMo or records under Section 610.021(14), RSMo which are otherwise protected from disclosure by law; seconded by Commissioner Minton and unanimously passed.

Commissioner Perry moved to **reconvene the open session of the commission** at approximately 12:00 p.m.; seconded by Commissioner Greene and unanimously passed.

Legislative Update

Randy Clarkson, Engineering Section Chief, reported Governor Holden has signed the bill allowing sewer districts and municipalities to require sewer connections.

Ms. Neff stated it does not matter if they are or are not in compliance with the Clean Water Law. It is a mandatory hookup where service is available.

SB 256 that has been signed into law also included some authorization for the SRF and state grant and loan programs. This bill assures that funding is authorized for those programs for at least the next year.

Mr. Clarkson provided excerpts from HB 501. When the Hog Bill was passed, there was confusion in the bill as to if the Department of Natural Resources or the Clean Water Commission was to administer this bill. Both the department and the commission were named in the bill. The section naming the commission contained a clause for sunset in five years. 640.755(1) and (2) were passed to clear up this confusing language and eliminate a potential loophole.

644.038 contains language that the department shall certify, without conditions, nationwide permits the Corps issues to the Missouri Department of Transportation.

Commissioner Minton asked why this only applies to the Department of Transportation.

Scott Totten, Interim Director of the Water Pollution Control Program, responded that lobbyists outside of the Department of Transportation pushed the legislation. The original language related to all nationwide permits no matter who the applicant was and it was then narrowed to just transportation projects.

Ms. Neff informed the commission that the Department of Natural Resources and the Army Corps of Engineers did not agree on the last nationwide permit and negotiations broke down with some districts. The department now has to look at each application individually for some districts.

Mr. Totten noted that the department may be prohibited from getting Missouri's conditions included on the next round of nationwide permits that MoDOT may receive. The only concrete example given for why this legislation was proposed was the Page Avenue Extension of Creve Coeur Lake and that was not a nationwide permit.

Ms. Neff noted she is not aware of any cases that involved the Highway Department but the Department of Natural Resources individually did the 401 certifications until this statute passed.

Mr. Totten explained the purpose of this was that, by federal definition, the nationwide permit is for impacts that are minimal on the environment. If the Corps of Engineers decides there is a minimal environmental impact, then the bill's sponsor believes that should be sufficient for the State of Missouri.

Commissioner Hegi asked what the nationwide permit is.

Mr. Totten responded it is similar to a general permit for a category of activities. This bill is not yet signed. Mr. Totten added it could have up to 43 amendments. This bill originally started out as the House version of the Senate bill that passed with the bond authorization in it. Mr. Totten noted it is very interesting that we now have bonds authorized in two bills that passed. The enabling legislation shows that those two provisions are in different sections of the Clean Water Law. The department is evaluating the bill and all the amendments with the Governor's staff. There are a lot of amendments related to the Department of Agriculture included in this bill as well as several other departments.

Chairman Herrmann says he goes back to the Supreme Court decision that says 404 permits are only applicable and required from the Corps of Engineers on navigable streams. The definition that they applied is that the stream has to be either in its present state or as improved capable of transporting interstate commerce and Creve Coeur Lake does not fall under that category nor does Blackbird Creek in North Missouri, nor many other streams for which they assume jurisdiction.

Mr. Totten stated a lot of the places that the Corps of Engineers requires those permits would not be navigable. That gives staff the opportunity to get a water quality benefit if they get an opportunity to put a condition on those.

Mr. Clarkson noted there was an effort to get this language in several bills so the Governor would sign at least one containing the language. This is the only bill containing this language that passed that staff is aware of at this time.

Commissioner Perry asked if there was an attempt to revise the affected party language.

Ms. Neff responded there was an attempt but it did not pass.

Mr. Totten noted Senator Caskey sponsored this legislation but he was not sure if it ever had a hearing.

Ms. Neff noted that once the TMDLs go into effect there will be a lot of people wanting third party appeals in front of the commission because of the limits on receiving waterbodies.

Mr. Clarkson reported that in trying to negotiate the language for the third party appeal process, the timeframe was shortened because the permittees did not want to have long delays. This timeframe appeared to be completely unworkable.

Responding to Commissioner Perry's question, Ms. Neff noted the term "affected party" was not added to the statute. She noted the timeframe being discussed was to have the appeal resolved within 45 days from the date that the appeal was filed to the commission making its final decision, which is just not realistic.

Commissioner Minton asked if anyone is still working toward third party appeals.

Mr. Clarkson stated the department director is very interested in this issue.

Ms. Neff noted there are legislators that are very interested along with director Mahfood being committed to the issue.

Other

Mr. Clarkson reported the federal government is coming out with a grant program to deal with sanitary and combined sewer overflows. It is anticipated this will be funded at 55% and the other 45% can come from the State Revolving Fund program. Congress is looking at authorizing \$450 million. The State of Missouri will get two or three percent of that total funding. It's possible that this program could be functional in time to receive November 15 applications as is used for other programs.

Chairman Herrmann asked if parameters for what constitutes an acceptable combined sewer overflow will be included.

Mr. Clarkson responded there is a federal law stating that final guidance on combined sewer overflows is to be out by July 1. He noted the draft guidance is fairly reasonable but it is not known if the final guidance will be issued in that same form and by the deadline. A proposed rule for sanitary sewer overflows was pulled back by the new administration so there is currently a void in this guidance. It is expected there will be reasonable guidance for combined sewer overflows although it is a very difficult area to address.

Chairman Herrmann noted he has seen some combined sewer overflows and sanitary sewer overflows that are less than acceptable toward solving the problem. He added that Illinois has a very stringent and well-defined program that staff could look at.

LEGAL MATTERS

Ms. Neff reported the parties to the Willamette appeal would like to hold a conference call to present legal issues to the commission. June 6 at 9:00 a.m. was selected as the date for the conference call with June 13 as an alternate.

Commissioner Hegi asked if they would be expected to make any decisions during this conference call.

Bill Bryan, Assistant Attorney General, indicated some decisions might be made during the call.

Ms. Neff stated she will send an agenda on the issues that are to be discussed and a public notice will also be done.

Commissioner Minton asked that background information be provided prior to the conference call.

Dismissal of Request for Variance CWC-V 2-98

Ms. Neff reported this dismissal was filed by Robert Brundage on behalf of Premium Standard Farms. Mr. Brundage filed a voluntary dismissal of this operator certification issue and none of the parties in this matter object. Ms. Neff recommended dismissal of this variance request.

Commissioner Hegi moved to **dismiss Request for Variance CWC-V 2-98 Operator Certification 10 CSR 20-14 Premium Standard Farms, Inc.**; seconded by Commissioner Minton and unanimously passed.

The commission signed the order dismissing this variance request.

Voluntary Dismissal of Appeal 345

The City of Columbia initially appealed a permit limit. Ms. Neff reported the city worked with staff and worked out the dispute and has now requested dismissal of the matter. She recommended dismissal of the appeal.

Commissioner Perry moved to **dismiss Appeal 345 City of Columbia**; seconded by Commissioner Greene and unanimously passed.

The commission signed the order dismissing this appeal.

Voluntary Dismissal of Appeal 346

Ms. Neff reported St. Louis County Water Company appealed a permit granted for their south plant. Effluent limitations and monitoring requirements were challenged. The parties have entered into a Settlement Agreement and the county water company agreed to submit a study plan to the department involving in-stream monitoring of effluent to determine water quality based limits for total residual chlorine and pH. The department agreed to work with the water company to find the appropriate downstream monitoring locations. The study is to be completed within one year after the study plan is approved. Chemical dechlorination may be approved if the study results show it is necessary. Until the final permit limits are determined to be obtained, the company has agreed to abide by the terms of the previous operating permit pertaining to pH limitations and the monitoring effluent chlorine. St. Louis Water Company is voluntarily dismissing the appeal as part of the Settlement Agreement. Ms. Neff recommended dismissal of the appeal.

Commissioner Hegi moved to **dismiss Appeal 346 St. Louis County Water Company**; seconded by Commissioner Kelly and unanimously passed.

Report and Recommendation for Appeal 351

Ms. Neff stated a lengthy hearing was held March 5 on this Request for Stay. The hearing officer proposed not granting the stay because he found that the appellant did not make a showing of immediate and irreparable injury, loss or damage if the stay was not granted. Neither party will contest the issue of the stay and the appeal is ongoing. Ms. Neff requested the commission adopt the hearing officer's Findings of Fact, Conclusion s of Law and Proposed Order.

Commissioner Greene moved to **accept the hearing officer's recommendation regarding the Request for Stay of Contested Permit Terms in Appeal 351**; seconded by Commissioner Kelly and unanimously passed.

The commission signed the order.

Ms. Neff informed the commission there was a contested issue regarding the timeliness of this notice of appeal. The hearing officer ruled in favor of Lincoln County Egg on the basis that it was timely filed. There was an argument over the interpretation of the statute that provides 30 days in which to file an appeal. The question is whether 30 days is upon notice or if it is 30 days from the issue date stated on the permit. Ms. Neff noted subject matter jurisdiction can be brought up at any time. Even though the hearing officer ruled the appeal was timely filed, it could be brought up again. If there is an appeal, it could be brought up by the parties or by the appellate court.

Commissioner Perry asked if there is some ambiguity that causes this problem that needs to be addressed.

Ms. Neff responded 10 CSR 20-6.020 can be interpreted that the appellant gets an additional three days mailing time. Another way to interpret this is that it is assumed that receipt will

be within three days mailing time and that could cause someone to think they have 33 days rather than 30. Ms. Neff explained the statute is very clear and says you have 30 days in which to file an appeal. The question there is will it be 30 days from when you are provided with notice or 30 days from the date that is on the permit. The department is looking at revising this regulation.

Mr. Laux stated the three days included in the regulation was added at the request of the commission. An appeal came in at 31 days and the argument was that while the permit was not received the day it was sent, the commission directed that the regulation be changed to reflect three days mailing time. The issue then comes up if they got it before, do they have only 30 days or do they have 33 days. Staff indicated permits could be sent certified mail but the commission decided it would be too costly.

Ms. Neff stated the statute can be read either way. The regulation can easily be read to indicate that the appellant gets 33 days in which to file an appeal.

Commissioner Perry stated it would be good to have this clarified.

Future Meeting Dates

The October and December meetings previously scheduled will not be held. A September 19 meeting was scheduled to be held in Cape Girardeau.

Commissioner Hegi mentioned that the Arkansas/Missouri Upper White River Basin Committee meeting will be held the week of November 5 in Springfield.

Tour of BASF Corporation

Mr. Clarkson reported the commission has been invited to tour BASF Corporation in conjunction with the July meeting in Hannibal. Commissioner Perry noted she will be out of state the evening before the meeting so she will not be able to attend. Several commissioners expressed an interest in attending so the tour will be arranged for the afternoon of July 17.

Commissioner Herrmann asked about touring Premium Standard Farms. He indicated if the commission does not do the tour an update would be in order.

Mr. Bryan, Assistant Attorney General, reported they are working on arranging a tour of PSF facilities within the next several months. When the technologies are in place they will set up the tour of the new technologies.

There being no further business to come before the commission, Chairman Herrmann adjourned the meeting at approximately 12:55 p.m.

Respectfully submitted,

Scott B. Totten
Interim Director of Staff